

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

SEP 22 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 06-21066-A-7
)
CORNELIUS and KAREN COVINGTON,) Docket Control No. KRS-2 &
) KRS-4
)
Debtors.) Date: Sept. 11, 2006
) Time: 9:00 a.m.
)
)

MEMORANDUM

13 Cornelius F. Covington ("the debtor") is one of the joint
14 debtors in this chapter 7 case. His petition was filed after the
15 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
16 (BAPCPA) became effective.

17 The Madera County Child Support Department has filed a proof
18 of claim on behalf of the debtor's daughter. The proof of claim
19 demands \$38,211.59 for past due child support.

11 U.S.C. § 101(14A) defines a domestic support obligation as:

22 a debt that accrues before, on, or after the date of
23 the order for relief in a case under this title,
24 including interest that accrues on that debt as
25 provided by applicable nonbankruptcy law
26 notwithstanding any other provision of this title, that
27 is- (A) owed to or recoverable by- (I) a spouse, former
28 spouse, or child of the debtor or such child's parent,
legal guardian, or responsible relative; or (ii) a
governmental unit; (B) in the nature of alimony,
maintenance, or support (including assistance provided
by a governmental unit) of such spouse, former spouse,
or child of the debtor or such child's parent, without
regard to whether such debt is expressly so designated;

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1 (C) established or subject to establishment before, on,
2 or after the date of the order for relief in a case
3 under this title, by reason of applicable provisions
4 of- (I) a separation agreement, divorce decree, or
5 property settlement agreement; (ii) an order of a court
6 of record; or (iii) a determination made in accordance
7 with applicable nonbankruptcy law by a governmental
8 unit; and (D) not assigned to a nongovernmental entity,
9 unless that obligation is assigned voluntarily by the
10 spouse, former spouse, child of the debtor, or such
child's parent, legal guardian, or responsible relative
for the purpose of collecting the debt.

11 Based on the information in the proof of claim, to which no
12 objection has been filed, it is clear that the \$38,211.59 is a
13 domestic support obligation.

14 When a debt is a domestic support obligation, it cannot be
15 discharged by an individual chapter 7 debtor. See 11 U.S.C. §
16 523(a)(5). Consequently, once an individual debtor receives a
17 chapter 7 discharge, the holder of a domestic support obligation
18 claim is not subject to the statutory injunction barring
19 enforcement of the debt against the debtor as a personal
20 liability. See 11 U.S.C. §§ 523(a)(5), 524(a)(2), & 727(b).

21 Moreover, a domestic support obligation may be enforced
22 against property of the debtor, both during the chapter 7 case
23 without violation of the automatic stay, and after entry of a
24 discharge without violation of the discharge injunction. See 11
25 U.S.C. §§ 362(b)(2)(B) & 522(c)(1). This is so even when the
26 property against which the domestic support obligation is being
enforced has been exempted by the debtor in the bankruptcy case.
See 11 U.S.C. §§ 522(c)(1). Section 522(c)(1) provides in
pertinent part:

27 Unless the case is dismissed, property exempted under
28 this section is not liable during or after the case for
any debt of the debtor that arose ... before the

1 commencement of the case, except - (1) a debt of a kind
2 specified in paragraph ... (5) of section 523(a) (in
3 which case, notwithstanding any provision of applicable
4 nonbankruptcy law to the contrary, such property shall
5 be liable for a debt of a kind specified in section
6 523(a) (5))....

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Because the debtor in this chapter 7 case owes a domestic support obligation, the trustee argues that section 522(c)(1) requires the disallowance of the debtor's exemptions in a \$1,000 bank deposit and an automobile to permit these assets to be liquidated and the proceeds paid to the holder of the domestic support obligation claim.

The trustee's objection to these exemptions will be overruled. Section 522(c)(1) does not provide for the disallowance of an exemption. Rather, it provides that property exempted by the debtor is nonetheless liable for a domestic support obligation. Disallowance of the exemption is not a predicate to the enforcement of a domestic support obligation against the property.

The next issue is whether, by virtue of section 522(c)(1), the trustee may liquidate the exempt property in order to pay the domestic support obligation. The court concludes that he may not. The trustee's motion to sell the automobile will therefore be denied.

A chapter 7 trustee must "collect and reduce to money property of the estate...." [Emphasis added.] See 11 U.S.C. § 704(a)(1). When a debtor exempts property, it is effectively removed from the estate.¹ See, e.g., In re Szekely, 936 F.2d 897

¹ However, if the property declared exempt by the debtor has value beyond the exemption amount, or if it appreciates

1 (7th Cir. 1991). Here, the automobile and the bank deposit have
 2 been removed from the estate by virtue of their exemption. There
 3 is no nonexempt value in either asset and neither has appreciated
 4 above the maximum exemption amount. Therefore, there is no
 5 "property of the estate" for the trustee to administer for the
 6 benefit of creditors in general or the holder of the domestic
 7 support obligation in particular.

8 An analogous situation, one that predates the enactment of
 9 BAPCPA, involves the enforcement of nondischargeable tax claims
 10 against exempt property. Like domestic support obligations,
 11 section 522(c)(1) permits the holder of a nondischargeable tax
 12 claim to enforce it against property the debtor has exempted in
 13 the bankruptcy case. See 11 U.S.C. § 523(a)(1). When taxes are
 14 owed, for example, to the Internal Revenue Service, section
 15 522(c)(1) dovetails with 26 U.S.C. § 6334(c) which provides that
 16 "[n]otwithstanding any other law of the United States..., no
 17 property or rights to property shall be exempt from levy" unless
 18 26 U.S.C. § 6334(a) provides an applicable exemption. Kieferdorf
 19 v. Commissioner, 142 F.2d 723 (9th Cir. 1944).

20 Even though this provision has been part of the Bankruptcy
 21 Code since 1979, the trustee has cited no authority indicating
 22 that he may liquidate otherwise exempt property because the
 23 debtor happens to owe a nondischargeable tax claim.

24 Also, while section 522(c)(1) permits the enforcement of
 25 domestic support obligation and tax claims against "property

26
 27 beyond the exemption amount after the petition is filed, the
 28 nonexempt amount or appreciation is property of the estate that
 may be administered by the trustee. See In re Hyman, 967 F.2d
 1316 (9th Cir. 1992).

1 exempted under ... section [522]," when such claims are enforced
2 pursuant to applicable nonbankruptcy law, that law may provide
3 the debtor with exemptions apart from section 522.

4 For instance, even though a debtor's exemptions under
5 section 522(b) will not prevent the Internal Revenue Service from
6 levying on property, it cannot levy against property of the type
7 described in 26 U.S.C. § 6334(a). And, in California, the
8 enforcement of a judgment for child, family, or spousal support
9 (all of which would be encompassed within the definition of a
10 domestic support obligation), is subject to some exemptions. See
11 Cal. Civ. Proc. Code §§ 703.070, 703.115.

12 Given the potential availability of these "nonbankruptcy"
13 exemptions, in a chapter 7 case that would otherwise be a "no-
14 asset" case, it makes more sense to require the holder of a
15 domestic support obligation claim, not the bankruptcy trustee, to
16 enforce a domestic support obligation in a nonbankruptcy forum.
17 That forum then may deal with the availability and extent of
18 nonbankruptcy exemptions.

19 Finally, a chapter 7 trustee generally will not administer
20 an asset unless it will produce a net return for the estate. For
21 instance, when an asset is fully encumbered by a lien, it is
22 considered improper for a chapter 7 trustee to liquidate the
23 asset. See e.g., In re Preston Lumber Corp., 199 B.R. 415
24 (Bankr. N.D. Cal. 1996).

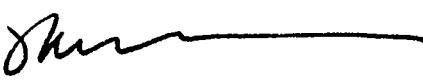
25 While the trustee's motion to sell does not involve the sale
26 of fully encumbered property, the property is being liquidated
27 for the benefit of just one creditor - the holder of the domestic
28 support obligation claim - rather than unsecured creditors

1 generally. Given that the Madera County Child Support Department
2 is collecting the claim for the benefit of the claim holder, it
3 is clear that the assistance of the trustee, which would come at
4 a price, is unnecessary. By enforcing the domestic support
5 obligation in state court, the trustee's administrative expenses
6 will be avoided. Cf. Williams v. California 1st Bank, 859 F.2d
7 664 (9th Cir. 1988) (holding that it is improper for a trustee to
8 liquidate claims that benefit only select creditors with the only
9 benefit to the estate being the recoupment of administrative
10 costs).

11 For these reasons, the trustee's objections to the debtor's
12 exemptions will be overruled and his motion to sell the
13 automobile will be denied. Separate orders will be entered.

14 Dated: Sept. 22, 2006

15 BY THE COURT

16 

17 Michael S. McManus, Chief Judge
18 United States Bankruptcy Court

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CERTIFICATE OF MAILING

2 I, Susan C. Cox, in the performance of my duties as a
3 judicial assistant to the Honorable Michael S. McManus, mailed by
4 ordinary mail to each of the parties named below a true copy of
5 the attached document.

6 Cornelius Covington
2613 Orchid St
7 Fairfield, CA 94533

8 Karen Devereaux-Covington
2613 Orchid St
9 Fairfield, CA 94533

10 Kenneth Sanders
PO Box 214205
11 Sacramento, CA 95821

12 Office of the U.S. Trustee
501 I Street, Room 7-500
13 Sacramento, CA 95814

14 Dated: September 32, 2006

Susan C. Cox
Susan C. Cox
Judicial Assistant to Judge McManus